

Rule 4001 - 1

Automatic Stay

(a) Relief From Automatic Stay

(1) Notice

(A) As to Property of the Estate

A party in interest desiring relief from the automatic stay of an act against property of the estate shall file a motion and give twelve (12) days notice to all entities on the Master Mailing List in accordance with LBR 2002-1. The notice shall describe the property or interest involved, including a statement as to its fair market value and any encumbrances thereon.

(B) As to Other Acts

A party in interest desiring relief from the automatic stay of an act other than against property of the estate shall file a motion and give twelve (12) days notice to the debtor and debtor's attorney in accordance with LBR 2002-1.

(C) General Provision

The date of the request shall be the date that a motion requesting a modification to the automatic stay is filed along with the certificate required by LBR 2002-1(b)(3).

(2) When an Objection is Made

(A) If an objection is timely filed and served, the party desiring relief from the stay shall obtain a hearing date and time from the court's website and shall notify the objecting party of the date of the hearing.

(B) The preliminary hearing will be by telephonic conference and based on affidavits only, but may be supported by written memoranda.

(C) Duty to Confer

The moving party has a duty to confer with an objecting party for the purpose of attempting to resolve the differences between the parties. This duty to confer shall be satisfied prior to the confirming of the hearing.

(D) Timing of Filing Affidavits and Supporting Memoranda

- (i) Notwithstanding LBR 5005-1(c), the moving party shall file and serve affidavits in support of request for modification of stay together with any memoranda of authority at least six (6) days before the preliminary hearing.
- (ii) The opposing party shall file and serve responsive affidavits and opposing memoranda of authority at least three (3) days before the preliminary hearing.
- (iii) Notwithstanding LBR 5005-1(c), a document intended to be considered by the Court in connection with a scheduled hearing or a request for modification of stay shall be served and filed in accordance with subparagraphs (i) and (ii) above and a copy shall be delivered to the chambers of the Bankruptcy Judge if the document has not been filed at least seven (7) days prior to the hearing.

(E) Waiver

Failure to follow these procedures by the moving party will be deemed to be a waiver of the automatic lifting provisions of 11 USC 362(e) and consent to the continuation of the automatic stay pending the conclusion of the final hearing.

(b) Confirmation That No Stay is in Effect, Continuation or For Reimposition of Stay

- (1) A party in interest desiring an order confirming that no stay is in effect pursuant to 11 USC 362(c)(4)(A)(ii), shall file a motion and shall give ten (10) days notice and hearing to the Master Mailing List in accordance with LBR 2002-1.
- (2) A party in interest desiring that the stay continue in effect pursuant to 11 USC 362(c)(3)(B) shall file a motion and give ten (10) days notice and hearing to the Master Mailing List in accordance with LBR 2001-1.

The motion shall be filed no later than five days following the filing of the petition for relief.

The date and time of the hearing shall be included in the notice and shall be within 30 days of the filing of the petition for relief.

- (3) A party in interest desiring the automatic stay to take effect pursuant to 11 USC 362(c)(4)(B) shall file a motion and give ten (10) days notice and hearing to the Master Mailing List in accordance with LBR 2002-1.

(c) Proof of Interest

A party desiring relief from the stay shall provide to the trustee or debtor in possession, with the notice, copies of documents evidencing the interest of the requesting party, and the perfection of that interest, if appropriate.

(d) Stipulation

A stipulation of the debtor allowing relief from the stay is effective only as to acts against the debtor or the debtor's property. A stipulation of the trustee or debtor in possession allowing relief from the stay is effective only after notice has been given to all entities on the Master Mailing List in accordance with subparagraph (a)(1) above.

(e) Non-combining of Motions

A motion for relief from the automatic stay or adequate protection shall not be combined with any other motion except a motion for abandonment or for relief from the co-debtor stay.

(f) Where No Objection is Made

If no objection is timely filed and served, the party desiring relief from the stay may present ex parte a proposed order in accordance with LBR 9013-1.

Related Provisions

FRBP 4001	Relief from Stay and Use of Cash Collateral
FRBP 9006(f)	Time
LBR 2001-1	Notice to Creditors & Other Interested Parties
LBR 9073-1	Hearings
11 USC 362	Automatic Stay
28 USC 1930 (b)	Bankruptcy Court Fee Schedule

Rule 4001 - 2

Cash Collateral

(a) Contested Use of Cash Collateral

(1) Notice

- (A) Unless the consent of each entity having an interest in the cash collateral is obtained, a trustee or debtor in possession desiring to use, sell, or lease cash collateral shall file and serve a motion, along with a form of the order as an attachment as required by FRBP 4001(b), and shall give fifteen (15) days notice to parties with an interest in the collateral, to any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors included on the list filed pursuant to FRBP 1007(d) and to such other entities as the Court may direct. If an objection is timely filed, the trustee or debtor in possession shall request a final hearing date in accordance with LBR 2002 - 1(f)(3).
- (B) For good cause shown, the trustee or debtor in possession may apply ex parte for an order shortening time for notice and setting a date for an interim hearing. The interim hearing will ordinarily be scheduled by the Court within five (5) days of the application. The trustee or debtor in possession shall promptly give telephonic notice of the interim hearing to entities with an interest in the collateral.

(2) Interim Hearing

The interim hearing shall be a preliminary hearing conducted by telephonically on the record submitted, which shall include affidavits or declarations in support of or in resistance to the requested use of cash collateral. Affidavits or declarations shall be served and filed as soon as practicable. The parties may present testimony at the interim hearing only on request of a party and approval of the Court. In the event testimony is permitted and fifteen (15) days notice has been provided in accordance with the provisions of subparagraph (a)(1)(A) of this Rule, then the interim hearing may be treated by the Court as a final hearing.

(3) Final Hearing

The date for the final hearing shall be set by the Court at the conclusion of any interim hearing. An interim order providing for use of cash collateral may, by its terms, become a final order approving use of cash collateral if notice of the interim

order is provided as set out in subparagraph (a)(1)(A) of this Rule and no objection is timely filed.

(b) Agreement Concerning Use of Cash Collateral Involving Adequate Protection and/or Security Interest in Post-Petition Assets

- (1) Any agreement concerning use of cash collateral involving adequate protection and/or granting of a security interest in post-petition assets of the debtor must be approved by order of the Court in accordance with FRBP 4001(d).
- (2) The provisions of this Rule pertaining to use of cash collateral set out in subparagraph (a) hereof shall also be applicable as to approval of agreements for use of cash collateral involving adequate protection and/or granting of a security interest in post-petition assets of the debtor.

(c) Agreements Concerning Use of Cash Collateral Not Involving Adequate Protection and/or Security Interest in Post-Petition Assets

Agreements between a trustee or debtor in possession and all parties having an interest in cash collateral that do not involve granting of adequate protection and/or security interests in post-petition assets of the debtor are not subject to approval by the Court, and notice of such agreements are not subject to the notice requirements of subparagraph (a) of this Rule.

(d) Motion to Prohibit Use of Cash Collateral

A party in interest may bring a motion to prohibit use by the trustee or debtor in possession of cash collateral. A motion to prohibit use of cash collateral shall be subject to the requirements of subparagraph (a) of this Rule.

(e) Use of Cash Collateral in Chapter 13 Case

In a case under Chapter 13, the debtor shall prepare all pleadings and documents if the debtor intends to use, sell or lease cash collateral. The debtor shall sign the pleadings, serve them on all required entities, including the Chapter 13 trustee, and file them with the Court. It shall be the debtor's responsibility to timely obtain the Chapter 13 trustee's signature on any necessary documents, to set any necessary hearings and to appear and argue at all hearings.

Related Provisions

FRBP 4001	Relief from Stay and Use of Cash Collateral
FRBP 9006(f)	Time

11 USC 353(a)(c)	Cash Collateral
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28 USC 1930 (b)	Bankruptcy Court Fee Schedule
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LBR 4001-2
OCTOBER 1, 2008

LBR 4001-3

Relief From Co-Debtor Stay

(a) Notice

- (1) A party in interest desiring relief from the co-debtor stay shall give twenty (20) days notice to the debtor and co-debtor in accordance with LBR 2002-1.
- (2) Service on the debtor and co-debtor shall be in accordance with FRBP 9014.
- (3) The notice shall state:
 - (A) That as between the debtor and the co-debtor, which party received the consideration for the claim held by the creditor; and
 - (B) Whether the plan filed by the debtor proposes to pay or not pay the claim; and
 - (C) Whether or not the creditor's interest would be irreparably harmed by the continuation of the stay; and
 - (D) That the stay may be terminated with respect to the party seeking relief unless the debtor or co-debtor files and serves a written objection.

(b) Order

If an order is desired it shall be requested in accordance with LBR 9013-1(c).

Related Provisions

11 USC 1201	Co-Debtor Stay
11 USC 1301	Co-Debtor Stay
FRBP 7004	Process, Service of Summons, Complaint
FRBP 9014	Contested Matters
LBR 2002-1	Notice to Creditors and Other Parties in Interest
LBR 4001-1(e)	Non-Combining of Motions
LBR 9013-1	Motions and Orders

LBR 4001-3
JUNE 1, 2007

Rule 4001 - 4

Deposit Of Rent

(a) Deposit of Rent by Debtor

When a debtor is required to deposit with the clerk of the court any rent that would fall due during the 30 day period after the filing of the petition for relief, pursuant to 11 USC 362(l)(1)(B), that deposit shall be in the form of a certified check or money order made payable to the lessor.

(b) Transmittal By Clerk

Upon receipt of such deposit, the clerk of the court shall promptly transmit the instrument to the lessor.

Related References

11 USC 362 Automatic Stay

LBR 4001 - 4
May 15, 2006

Rule 4002 - 1

Debtor - Duties

(a) Inventory or Equipment

When inventory or business equipment is scheduled, the debtor shall, immediately after the general description thereof, list a present inventory, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

(b) Need for Immediate Attention

If a property of the estate includes perishable goods or if the business premises otherwise needs immediate attention or protection, the debtor or the attorney for the debtor, when relief is ordered under Chapter 7, 12 or 13 or a trustee is appointed under Chapter 11, shall notify the United States trustee of the need for immediate action. Notification shall be by personal communication or by telephone.

(c) Tax and Other Information Where Case is Pending

- (1) Where a request is made that the debtor file tax and other information pursuant to 11 USC 521 (f), the information shall be filed electronically if filed by an attorney, or if by the debtor conventionally in accordance with LBR 9018-1, in which case the debtor shall promptly notify the party requesting that the information has been filed.
- (2) Where the party requesting that the information desires to view the information, such request shall be made in accordance with LBR 9018-1.
- (3) If the requesting party and debtor so elect, the debtor may provide the requested information directly to the requesting party.

Related Provisions

11 USC 521
11 USC 707

Debtor's Duties
Duties of Trustee

LBR 4002 - 1
May 15, 2006

Rule 4003 - 2

Lien Avoidance

- (a)** A party seeking to avoid a lien pursuant to 11 USC 522(f) shall file a motion and give fifteen (15) days notice to the trustee and the creditor holding the lien in accordance with LBR 2002-1.
- (b)** The notice and motion shall contain:

 - (1) a description and statement of the value of the property encumbered as if there were no liens on the property;
 - (2) a description and the amount of the lien to be avoided;
 - (3) specific identification of the statutory authority for avoiding the fixing of the lien; either a judicial lien or a nonpossessory, non-purchase money security interest;
 - (4) a description and the amount of all other liens on the property, individually identified as to each lien holder, and a statement whether any such liens have or are subject to being avoided under this rule, or a statement that there are no other liens; and
 - (5) a statement as to the specific statutory exemption claimed and the amount of the exemption claimed.
- (c)** Service of the notice on the lien creditor shall be in accordance with FRBP 7004.

Related Provisions

FRBP 4003

FRBP 9006

FRBP 9014

Exemptions

Time

Contested Matters

LBR 2002-1

Notice to Creditors and Other Interested Parties

11 USC 522(f)

Exemptions

LBR 4003 - 2

December 1, 2008